

Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

By Email to: consultation@oaic.gov.au

May 19, 2016

OAIC Consultation: “Privacy and start-up businesses”

Dear Mr. Commissioner,

Adaptant welcomes the opportunity to respond to the public consultation seeking comments on the draft privacy business resource document concerning privacy and start-up businesses.

In reviewing the proposed draft, we have identified a number of points of concern and wish to contribute the following observations:

1. Impact of the EU General Data Protection Regulation (GDPR)

With the EU’s data protection laws being overhauled in the form of the GDPR (now Regulation (EU) 2016/679), impact will extend to any entity (both inside and outside of Europe) collecting, holding, or using personal data on EU citizens. As many start-ups both utilize and provide Cloud-based services (or otherwise look to expand their reach internationally during their growth stage), a risk of cross-border personal data collection, additional data protection requirements, and the risk of financial penalties for non-compliance exists. The awareness of this is something that we believe should be clearly emphasized.

While the GDPR itself will not take effect before 2018, we also suggest that this is a key consideration for start-ups who are in their early stages (as a means of future-proofing and competitive advantage) or who are looking towards acquisition by a larger company as an exit strategy. While a fine of 4% of annual global turnover may be negligible for a fledgling start-up, the overall risk this would expose to a larger multi-national organization through a subsequent acquisition, and the impact on the attractiveness of the start-up as an acquisition target should not be discounted.

2. Data De-identification and Big Data Processing

While we appreciate the emphasis placed on data de-identification/anonymization, minimization, and its positive impact on risk reduction for data breaches, we would also like to point to the opinion of the EU’s Article 29 Data Protection Working Party which finds that a risk of re-identification exists when additional data sets are able to be correlated and processed. With this in mind, we would recommend that start-ups engaged in the handling of personal data also consider the risk of re-identification when carrying out their Privacy impact assessments and the impact this may have on third-party data processing. Businesses may also wish to consider a so-called ‘big data opt out’ clause both between themselves and their customers, as well as with any third-party data processors as an additional risk mitigation measure. Businesses planning on providing services to the EU (or collecting data on EU citizens) can similarly build on this for GDPR future-proofing.

3. Limitations on use of Personal Data

Concerning the recommendation on limiting the use of personal data for the purpose of collection (the ‘primary purpose’) or secondary use that could be reasonably expected (the ‘secondary purpose’, APP 6.2(a)), we would instead advise start-ups to consider more inclusive business models in which individual consent can be obtained for new secondary purposes (APP 6.1(a)) as they emerge (such as through the application of big data analytics or machine learning). Numerous studies have shown that individuals are willing to disclose more personal data if they felt that they received value (in the form of advanced personalized and contextual offerings) in return. As such, being able to obtain individual consent for new secondary purposes can be seen to not only create new opportunities for data monetization and product diversification by the business, but also in contributing to value generation for the individual as a customer. Furthermore, businesses that have followed privacy-by-design (PbD) principles from their formation are better positioned to curate the individual trust needed to enable more inclusive business models.

4. Conclusion

In conclusion, we welcome the progress made by the OAIC in providing start-up businesses with much-needed guidance and resources for enabling good privacy practices. We suggest that there is further work to be done in providing adequate awareness of the EU’s GDPR and its potential impact on Australian start-ups, as well as the opportunity for privacy-preserving inclusive business models that codify privacy-by-design and data re-use (in line with APP 6) as a unique selling point and source of competitive advantage. We would further welcome the opportunity to assist and support the OAIC in addressing and expanding upon these points.

Yours faithfully,



Paul Mundt
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